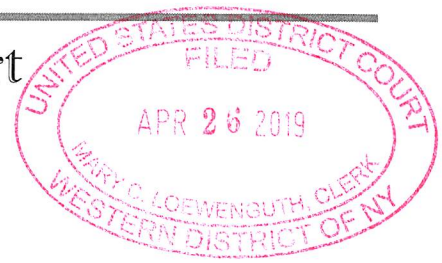


United States District Court
for the
Western District of New York



In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address.)

3282 Transit Road, Albion, New York 14411

Case No. 19-MJ- 87

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location):*

3282 Transit Road, Albion, New York 14411

located in the Western District of New York, there is now concealed *(identify the person or describe the property to be seized):*

See Attachment B, Items to be Searched and Seized

The basis for search under Fed. R. Crim. P. 41(c) is *(check one or more):*

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of Title 18, United States Code, Sections 1546(a), 1546(b)(2), and 1028A(a)(1).

The application is based on these facts:

- ☒ continued on the attached sheet.
- ☐ Delayed notice of ____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

CHRISTOPHER SZMANIA
SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS

Printed name and title

Sworn to before me and signed in my presence.

Date: April 26, 2019

Judge's signature

City and state: Buffalo, New York

H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

Printed name and Title

AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, **CHRISTIOPTHER M. SZMANIA**, a Task Force Officer assigned to Homeland Security Investigations (HSI), being duly sworn, deposes and states as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Deportation Officer (DO) employed by the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Office of Enforcement and Removal Operations (ERO) and have been so employed since March 30, 2008. I am currently assigned to the Homeland Security Investigations (HSI), Buffalo Document and Benefit Fraud Task Force (DBFTF) as a Task Force Officer. As part of my duties with HSI Buffalo, I have participated in multiple investigations and/or criminal prosecutions concerning worksite enforcement, businesses that employ unauthorized aliens, and possession and use of fraudulent documents. As such, I am a federal law enforcement officer within the meaning of Federal Rule of Criminal Procedure 41; that is, empowered by law to apply for search warrants.

2. This affidavit is submitted in support of an application for a warrant to search the residence located at 3282 Transit Rd., Albion, NY 14411 (hereinafter referred to as the "SUBJECT PREMISES"), more fully described in Attachment "A", for evidence of violations of Title 18, United States Code, Section 1546(a) (possession of fraudulent documents), Title 18, United States Code, Section 1546(b)(2) (use of fraudulent documents

for employment), and Title 18, United States Code, Section 1028A(a)(1) (aggravated identity theft). The items to be seized in the SUBJECT PREMISES are more fully described in Attachment "B".

3. This investigation encompasses the participation of several law enforcement agencies, including HSI and ERO operating in Western New York. The investigation to date has utilized a wide variety of law enforcement techniques both overt and covert, including physical surveillance, reviewing employment documents, and interviewing witnesses. I am familiar with the information contained in this affidavit based upon my participation in the investigation, my review of activities related to the investigation, my review of documents obtained as part of this investigation, and information provided to me by other law enforcement officers who have personal knowledge of the events and circumstances described herein. Because this affidavit is submitted for the limited purpose of securing a search warrant, it does not contain all the information that I have learned during the course of this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that evidence of violations of Title 18, United States Code, Sections 1546(a), 1546(b)(2), and 1028A(a)(1) are presently located at the SUBJECT PREMISES.

4. Based on the facts set forth in this affidavit, I respectfully submit that there is probable cause to believe that there is presently concealed, in the SUBJECT PREMISES, the items described in Attachment B hereto, all of which constitutes evidence, fruits, and instrumentalities of violations of Title 18, United States Code, Sections 1546(a), 1546(b)(2), and 1028A(a)(1).

APPLICABLE LAW

5. This investigation involves the following offenses:

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained, is in violation of Title 18, United States Code, Section 1546(a);

(b) Whoever uses—an identification document knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor...for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), is in violation of Title 18, United States Code, Section 1546(b)(2); and

(c) Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years, is in violation of Title 18, United States Code, Section 1028A(a)(1). Title 18, United States Code, Section 1028A(c)(7) includes any provision contained in chapter 75 (relating to passports and visas).

BACKGROUND OF INVESTIGATION AND PROBABLE CAUSE

6. As detailed below, this investigation has determined that probable cause exists to believe that fraudulent documents in the form of a fraudulent Lawful Permanent Resident card/Alien Registration card (I-551) and fraudulent social security card, evidence of violations of Title 18, United States Code, Sections 1546(a), 1546(b)(2), and 1028A(a)(1), are located inside of the SUBJECT PREMISES.

7. On March 26, 2019, ERO received a call for assistance from the Orleans County, New York Sheriff's Office after five individuals were encountered by the Orleans County, New York Sheriff's Office at 3282 Transit Road, Albion, New York 14411 claiming to be born outside of the United States. Four of these individuals were determined to be in violation of the Immigration and Nationality Act (INA) and were subsequently arrested. One of these individuals was Eusebio CHAVEZ-ISLAS. Following the arrest of these individuals, it was determined that all four of them, including CHAVEZ-ISLAS, were employed by Nesbitt Brothers, LLC. Record checks conducted for CHAVEZ-ISLAS indicated that he was illegally present in the United States.

8. During the encounter and investigation it was determined that CHAVEZ-ISLAS was working at Nesbitt Brothers, LLC unlawfully and without proper work authorization.

9. On April 18, 2019, HSI obtained Form I-9 for CHAVEZ-ISLAS from Nesbitt Fruit Farms, the owner of Nesbitt Brothers, LLC. A Form I-9 is an employment document

that is required to be filled out by all employees and kept on file by employers in the United States. At that time, Nicole Reynolds, employee at Nesbitt Brothers, LLC and Nesbitt Fruit Farms, provided HSI with the Form I-9 document for CHAVEZ-ISLAS along with copies of the documents he had utilized to gain employment.

10. The Form I-9 had a photocopy of a fraudulent Permanent Resident card/Alien Registration card (I-551) and fraudulent social security card¹ which was provided by CHAVEZ-ISLAS for purposes of his employment. Records checks of the alien number which was depicted on the photocopies of the Alien Registration card and the social security number which was depicted on the social security card revealed that the documents were fraudulent. The social security card number, 354-09-XXXX, is a valid social security number, but it is not assigned to CHAVEZ-ISLAS. Although photocopies of the fraudulent lawful permanent resident card and fraudulent social security card were attached to each Form I-9, the original documents were never discovered, encountered, or recovered as part of the investigation.

11. On April 24, 2019, HSI Buffalo Task Force Officers traveled to the Batavia Detention Facility and provided CHAVEZ-ISLAS with his *Miranda* rights. CHAVEZ-ISLAS voluntarily waived his rights and agreed to speak with agents. When CHAVEZ-ISLAS was

¹ Counterfeit social security cards fall within the ambit of Title 18, United States Code, Section 1546(a) because they are evidence of authorized employment in the United States. As held by the Eighth Circuit, “the district court correctly concluded that even an unsigned social security card is a document ‘prescribed by statute or regulation...as evidence of authorized...employment in the United States’ within the meaning of 18 U.S.C. § 1546(a).” United States v. Pool-Chan, 453 F.3d 1092, 1094 (8th Cir. 2006). In that case, the defendant was convicted of possessing a counterfeit social security card in violation of Title 18, United States Code, Section 1546(a).

shown photocopies of the fraudulent documents attached to his Form I-9—which consisted of a fraudulent alien registration card and a fraudulent social security card—he admitted that these documents were fraudulent and that he utilized these counterfeit documents to obtain employment at Nesbitt Brothers, LLC. CHAVEZ-ISLAS stated that he paid \$80 for these fraudulent documents while he was in Florida. The name depicted on the fraudulent alien registration card and fraudulent social security card that he utilized was “Eusebio Chavez”, which is a variation of his actual name. When asked where the documents are presently located, CHAVEZ-ISLAS stated that he disposed of the fraudulent alien registration card approximately 15 days prior to his arrest by ERO since he damaged it in the wash. CHAVEZ-ISLAS stated that the fraudulent social security card is presently located in the SUBJECT PREMISES.

12. On April 24, 2019, an HSI Buffalo Task Force Officer and HSI Special Agent spoke with Steven Nesbitt telephonically, who is involved in the management and daily operation of Nesbitt Brothers, LLC. Nesbitt confirmed that Nesbit Brothers, LLC is the owner of the SUBJECT PREMISES and uses it as a place for their workers to live. Nesbitt further confirmed that CHAVES-ISLAS resided at the SUBJECT PREMISES and that he was employed by Nesbitt Brothers, LLC. Nesbitt stated that he has not entered the SUBJECT PREMISES since the aforementioned illegal aliens were arrested, nor did he remove any of their property, and that there is still one individual residing in the SUBJECT PREMISES. He also stated that he would not enter the SUBJECT PREMISES again until this matter is resolved. As previously stated, Nesbitt Brothers, LLC owns the SUBJECT PREMISES and uses it to house workers.

13. Based on my training and experience, and conversations held with Special Agents who have worked similar cases in the past, counterfeit identification documents or fraudulent documents used for employment, or documents used to establish lawful status in the United States, such as social security cards and lawful permanent resident cards, are valuable for individuals illegally present in the United States, or those who do not have work authorization, and therefore maintained by said individuals for substantial periods of time. Based on my training and experience, such individuals will go to great lengths to conceal and protect from discovery, theft, and damage their counterfeit social security cards and counterfeit lawful permanent residence cards. Based on my training and experience, said documents are almost always maintained in a secure location, such as the security of their homes or on their person. Based on my training and experience, the importance and value associated with these documents for someone such as CHAVEZ-ISLAS, and in light of the fact that CHAVEZ-ISLAS used the counterfeit lawful permanent resident card and counterfeit social security card to illegally obtain employment, and for all of the foregoing reasons, it is more probable than not that the counterfeit lawful permanent resident and social security cards are inside the SUBJECT PREMISES.

14. Based on the foregoing, there is probable cause to believe that CHAVEZ-ISLAS violated Title 18, United States Code, Sections 1546(a), 1546(b)(2), and 1028A(a)(1), and that the counterfeit social security card and counterfeit lawful permanent resident card/alien registration card related to these violations of federal law may be found in the SUBJECT PREMISES.

PREMISES TO BE SEARCHED AND ITEMS TO BE SEIZED

15. This affidavit is made in support of an application for a search warrant for the premises referred to as the SUBJECT PREMISES, the residence located at 3282 Transit Rd., Albion, NY 14411, a detailed description of which is attached hereto in Attachment A with two pictures attached.


16. Based on my training and experience, based on the information received from CHAVEZ-ISLAS, based on information received from Nesbitt Brothers, LLC it is more probable than not that evidence, property, fruits, and instrumentalities of these offenses, and other items related to these violations of federal law, may be found in the SUBJECT PREMISES.

CONCLUSION

17. Accordingly, it is respectfully submitted that probable cause exists to believe that violations of Title 18, United States Code, Section 1546(a), Title 18, United States Code, Section 1546(b)(2), and Title 18, United States Code, Section 1028A(a)(1) have occurred and that property, evidence, fruits, and instrumentalities of these offenses, more fully described in Attachment B of this affidavit, are located in the SUBJECT PREMISES, as described in Attachment A. As such, it is respectfully requested that the attached warrant be issued authorizing the search of the SUBJECT PREMISES.

WHEREFORE, I respectfully request that the Court issue a warrant authorizing


Agents of Homeland Security Investigations to search the SUBJECT PREMISES, as further described in Attachment A, for the evidence and instrumentalities of the offenses, as described in Attachment B.



CHRISTOPHER M. SZMANIA
Task Force Officer
Homeland Security Investigations

Sworn and subscribed to before

me this 26th day of April 2019.



H. KENNETH SCHROEDER, JR.
United States Magistrate Judge

ATTACHMENT A — PREMISES TO BE SEARCHED

a. **SUBJECT PREMISES:** the premises to be searched is 3282 Transit Road, Albion, New York 14411. The residence consists of a one-story trailer.

b. The front of the residence has a white front door facing east, with tan siding:



c. The back of the trailer, facing west, has tan siding and a porch with brown wooden railings:



**ATTACHMENT B — DESCRIPTION OF ITEMS TO BE SEARCHED FOR
AND SEIZED**

Items to be searched for and seized are the evidence, fruits, instrumentalities, or contraband relating to violations of Title 18, United States Code, Section 1546(a), Title 18, United States Code, Section 1546(b)(2), and Title 18, United States Code, Section 1028A(a)(1), including, but not limited to, the following:

- a. Counterfeit alien registration cards/lawful permanent resident cards and counterfeit social security cards; and
- b. By this search warrant, your affiant also requests permission to take photographs of any evidentiary items or search venues at the time of the search.

All relating to violations of Title 18, United States Code, Section 1546(a), Title 18, United States Code, Section 1546(b)(2), and Title 18, United States Code, Section 1028A(a)(1).